IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.826 of 2007.

Bhausaheb J. Patil & Anr. ..Appellants

versus

Municipal Corporation of Gr. Bombay & Ors. ..Respondents

Mr.S.K.Mali for the appellant.

M/s. Divakar & Associates for the respondents.

Coram : S.R.Sathe, J.
Dated : 1st Nov., 2007

JUDGMENT

1. Appellants the Original Plaintiffs in L.C.Suit No.2531 of 2007 have preferred this appeal against the order passed by the Judge, City Civil Court, Mumbai in Notice of Motion No.2572 of 2007 whereby the ad-interim order of status quo granted earlier was made absolute, but at the same time it was observed in the reasoning part of the Order that the defendants 2 to 4 can proceed with further work of development, if they comply the suggestions given by their own Architect in order to prevent the danger to the structural stability of the unit of Plaintiffs.

2. For the sake of convenience, hereafter the

parties shall be referred to as plaintiffs and defendants.

3. Brief facts giving rise to this appeal are as under:

. It is the plaintiffs case that they are perpetual lessees of the 1/3rd portion of the structure standing on the suit plot No.458 bearing CTS No.1387, 14th Road, Chembur, Mumbai. The defendant nos.2 and 3 are the heirs and representatives of one J.B.Denis and they are also occupying 1/3rd portion of the suit property. The defendant no.4 is the power of attorney holder of the defendant nos.2 and 3. The structure presently standing on the suit plot is constructed by Joseph Denis during his lifetime. The said structure is having three different premises, but attached to each other and are consisting of stilt and upper two floors. The premises or unit No.1 is occupied by defendant nos.2 and 3. The premises that is Unit No.2 is occupied by one tenant by name Lamba and the premises i.e. unit No.3 is occupied by the plaintiffs. The said Joseph B. Denis sought permission from the Competent Authority to develop

the suit plot under Section 22 of Urban Land (C & R) 1986 dated 31.10.1988. In pursuance of the said permission he submitted plans to BMC and obtained IOD on 19.3.1989. The said Denis entered into an agreement with one Sohanlal & Company to transfer, assign and or surrender the tenancy in favour of any person subject to payment of transfer charges. Said Sohanlal further leased the premises to one Jaya Kaveri and ultimately by agreement dated 23.10.95 plaintiffs got the lease rights in respect of the premises No.3. Thus, the suit premises No.3 are presently occupied by the plaintiff. The defendant No.4 filed suit No.RAE 544/882 of 2006 in the name of defendants 2 and 3 against the plaintiff No.2 alone for decree of eviction and injunction. However, no relief was granted in the said suit. In the said suit it was admitted that plaintiffs are lessees of the premises No.3. It was also disclosed that the defendant Nos.2 and 3 intend to demolish the existing suit structure and to put up a multi-storeyed building at the said place.

4. According to plaintiffs the defendants 2 to 4 by misleading the Corporation got the plan sanctioned and obtained IOD. On 31.5.2007

plaintiffs noticed that the defendant No.4 was trying to demolish premises No.1 occupied by him. As all the three premises i.e. Nos.1, 2 and 3 were attached to each other, apprehending the danger to the premises occupied by the plaintiffs, they lodged written complaint dated 1.6.2007 to the Assistant Engineer, B.T. Pant Nagar Ward of defendant No.1 Corporation. The defendants 2 to 4 were in fact not entitled to carry out any construction in the suit plot and plaintiffs therefore asked Corporation to issue notice under Section 354 A of B.M.C.Act to defendant No.4. Accordingly, notice was issued by Defendant Corporation to defendant No.4 to stop work of demolition of the existing premises. The plaintiff also filed the present suit for declaration that the defendants 2 to 4 have no right to demolish the existing three premises for the purpose of construction of the multistoreyed building on the suit property i.e. plot of land bearing No.458 CTS No.1387, Chembur and for declaration that the IOD issued by the Executive Engineer of Defendant No.1 Corporation is illegal and also prayed that the Corporation be directed to cancel the IOD.

5. Plaintiffs also filed Notice of Motion and prayed that the defendant No.1 Corporation be directed to cancel the IOD issued in favour of the defendant Nos.2 to 4 and for restraining defendant No.1 from issuing any commencement certificate. The plaintiffs also prayed that defendants 2 to 4 be restrained from demolishing and or pulling down the existing three premises and or carrying out any construction and redevelopment at the suit plot and disturb the possession of plaintiffs of the suit premises No.3.

6. The defendant No.1 Corporation filed their written say and contended that the suit is bad for want of notice under Section 527 of BMC Act. They also contended that the suit is not maintainable in view of the provisions of Section 149 of MRTP Act. They admitted that on the complaint of the plaintiffs they issued notice to defendants 2 to 4 and asked them to stop the work. They also contended that plaintiffs have not made out any prima facie case for granting temporary injunction as prayed.

7. On behalf of the defendant No.4 one Nitin

Gandhi filed Affidavit in reply and opposed the Notice of Motion. He contended that the defendant has got every right to demolish the suit premises Nos.1 and 2 and that plaintiff is not entitled to obstruct the defendant to carry out the said construction work. He also contended that if such demolition and reconstruction is carried out there will not be any danger to the premises No.3 which is presently occupied by the plaintiffs. He, therefore, submitted that the plaintiffs are not entitled for temporary injunction as prayed.

8. After hearing the arguments of both the learned advocates and considering the documents produced on record, the learned trial Judge came to the conclusion that plaintiffs have made out a prima facie case. However, according to him the balance of convenience was not in favour of the plaintiffs and if temporary injunction is issued the defendant nos.2 to 4 would not be in position to carry out any development and irreparable loss will be caused to them. He, therefore, passed an order directing the parties to maintain status quo, but in the reasoning part of the said Order he observed that the defendants 2 to 4 can proceed with the constructions

of the other two premises if they take the necessary precaution and carry out the suggestions given by their own architect.

9. Being aggrieved by the above mentioned observations the plaintiffs have filed the present appeal. In this appeal before me the learned advocate for the appellant has urged two points. Firstly, he submitted that having come to the conclusion that plaintiffs have made out a prima facie case it was not proper on the part of the learned trial Judge to allow the defendants to proceed with the construction work. Secondly, he canvassed before me that the three premises are adjacent to each other. In fact, there is only one common slab for the three premises and as such if demolition is allowed there would be certainly danger to the plaintiffs premises. Lastly, he submitted that even if the temporary injunction is granted, no irreparable loss is likely to be caused to the defendants. As against this, Shri Divekar, learned Advocate for the defendants submitted that the plaintiffs have no right to obstruct for the other two premises which are admittedly neither owned or possessed by the plaintiffs. Besides this,

he also submitted that the defendants are ready to take all precautionary measures while demolishing the premises Nos.1 and 2 and they are even ready to accommodate the defendant No.3 in alternate premises till the work of premises Nos.1 and 2 is completed. However, it is very clear that the plaintiffs have not agreed even the last suggestion made by the learned advocate for the defendants.

10. Normally, when plaintiffs are only in occupation of the premiss No.3, they are not entitled to object the defendants to demolish the other two premises or to carry out any construction unless it is shown that proposed demolition work or construction work is likely to cause any damage to life and property of the plaintiffs. While considering this aspect it must be noted that admittedly all the three premises are having common slab. If we see the photographs which are on record then also it is very clear that it is very difficult to demolish only premises 1 and 2 without causing any damage to the premises No.3. Infact, considering this position even during the course of argument it was even suggested to the parties that they should arrive at some amicable settlement as a

result of which interest of plaintiffs would be protected in every respect and at the same time the defendants would also be able to carry out the demolition of the two premises and then construct the same provided it is permissible under law. However, though sufficient opportunity was given, the parties could not arrive at any amicable settlement.

11. It is pertinent to note that in the instant case the plaintiffs have produced the report of the their architect S.G.Patil Consultants wherein he has stated :

> 1. That the row houses no.1,2 and 3 are combined one building and not three seperate single units as approved by the Mumbai Municipal Corporation. The Unit No.1 belongs to Shri Mark Denis, who has given it for Development. The unit No.2 and 3 are the instructors Shri Gushan Lamba and Shri Bhausaheb Patil. All the three are the owners of the building in question.
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> 2. That the stability of all three units is interlinked and cannot be separated from each other. The adjacent units are interconnected and dependent on each other.
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> 3. That the structure will become unsafe and unstable and will be endanger if any one row houses is made considering continuity of each other. In this case if unit No.1 is demolished then, unit No.2 and unit No.3 will be unsafe and unstable as

they are dependent and continuous.

We therefore CERTIFY THAT the proposed demolition of the unit No.1, of the row houses at plot No.1387, 14th Road, Chembur, Mumbai 400 071, shall not be safe and stable for the purpose for which it is intended.

As against this, defendants have also produced report of their architect who has suggested that if certain precautions are taken then it is possible to demolish the premises Nos 1 and 2 without causing any danger to the premises occupied by the plaintiffs. However, when such two conflicting opinions are on record and when defendant's architect or defendants are not able to point out that the report given by the Architect of the plaintiffs is totally incorrect and not scientific, it is certainly not proper to discard the same at this stage. One certainly cant take the risk of possibility of causing damage to the life and property of the plaintiffs.

12. We also cannot ignore the fact that in the instant case the defendants have infact filed a suit for eviction in Small Causes Court against the present plaintiff. So, it appears that finding that there is no possibility of getting the possession of the suit premises early, the defendants are trying

to evict the plaintiffs by one way or the other or by putting him under pressure.

13. There is another aspect of the matter. If we see the letter written by the Corporation to the defendant Nos.2 to 4 then it is very clear that before starting the demolition work it was necessary for the defendants 2 to 4 to obtain the consent from the occupiers/tenants of the suit property. Admittedly, they have not done so. So, in a way the defendants have not complied the terms and conditions on which they were permitted to carry on demolition/construction. Naturally, unless all those terms are fulfilled the defendants 2 to 4 can certainly not carry on demolition or construction. In view of above, I have no hesitation to hold that plaintiffs have made out a prima face case for granting temporary injunction and the balance of convenience is also in their favour. If anything goes wrong while carrying out demolition or construction and there is loss of life then the said loss cannot be compensated in terms of money and in any event such loss would be irreparable. Having regard to all these facts and circumstances, I think that it is necessary to

restrain defendant Nos.2 to 4 from carrying out any demolition/construction/redevelopment of the suit property till the disposal of the suit. Hence, I pass the following order:

ORDER

1. The appeal is partly allowed.

2. The Order passed by the Judge City Civil Court, Bombay in Notice of Motion No.2572 of 2007 is modified and defendants 1 to 3 are restrained from carrying out any work of demolition/ construction/ re-development of the structure standing on plot No.458 CTS No.1387, 14th Road, Chembur, Mumbai till disposal of the suit.

3. The trial Court is directed to dispose of the suit on merits according to law without getting influenced by the observations made in this order, as expeditiously as possible and in any event by the end of April 2008.

4. Under the circumstances of the case parties to bear their own costs of this appeal.

(S.R.Sathe, J.)